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9 NATIONWIDE MUTUAL INSURANCE COMPANY
10

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 NATIONWIDE MUTUAL INSURANCE
16 COMPANY,

17 Plaintiff,

18 vs.

19 ALEXANDER HOLTON; JOHN
20 WESTOBY, LYNN WESTOBY, MARIE
21 RAPHAEL, RAY RAPHAEL, STATE
22 FARM MUTUAL AUTOMOBILE
23 INSURANCE COMPANY and DOES 1-
24 50, inclusive,

25 Defendants.
26
27
28

CASE No. C04 – 4933 MMC

**STIPULATION TO ALLOW PLAINTIFF
NATIONWIDE MUTUAL INSURANCE
COMPANY TO FILE A FIRST AMENDED
COMPLAINT; AND**

~~PROPOSED~~ ORDER

29 For good cause and upon the stipulation of parties herein, Nationwide seeks leave
30 of Court to file the attached First Amended Complaint which replaces the erroneously
31 named defendant State Farm Mutual Automobile Insurance Company with the correct
32 entity, State Farm General Insurance Company.
33
34

RECITALS

WHEREAS:

On or about August 29, 2003, Alexander Holton was involved in a single-car automobile accident near Fort Bragg, California. As a result of the accident, both of the passengers in the vehicle driven by Alexander Holton, Jamie Westoby and Nicholas Raphael were killed.

Defendant State Farm **Mutual** Automobile Insurance Company ("State Farm Mutual") issued an automobile liability insurance policy to Alexander Holton that was in effect at the time of the accident (the "State Farm automobile liability policy").

State Farm **General** Insurance Company ("State Farm General"), who was not named as a party to this case, issued a personal umbrella policy to John Holton, Alexander Holton's father, that was in effect at the time of the accident (the "State Farm personal umbrella policy").

Plaintiff Nationwide Mutual Insurance Company ("Nationwide") issued personal umbrella insurance policy number PA 7801196226 to John and Nancy Dickmeyer (Alexander Holton's mother), that was in effect at the time of the accident (the "Nationwide personal umbrella policy").

John and Lynn Westoby (the parents of Jamie Westoby) and Marie and Ray Raphael (the parents of Nicholas Raphael) have asserted that liability coverage is afforded for the death of Jamie Westoby and Ray Raphael under (1) the State Farm automobile liability policy; (2) the State Farm personal umbrella policy; and (3) the Nationwide personal umbrella policy.

On November 19, 2004, plaintiff Nationwide filed its complaint in this action seeking, *inter alia*, declaratory relief concerning its rights and obligations under the Nationwide policy, and the rights and obligations of plaintiffs Alexander Holton, John Westoby, Lynn Westoby, Marie Raphael, Ray Raphael, and State Farm Mutual. At the time of the filing of its complaint, Nationwide understood that State Farm Mutual issued the personal umbrella policy which was actually issued by State Farm **General**.

On February 17, 2005, State Farm Mutual answered Nationwide's complaint, admitting, *inter alia*, that State Farm Mutual issued the State Farm personal umbrella policy. This admission was an error, as instead, State Farm **General** issued the State Farm personal umbrella

1 policy.

2 In late February 2005, State Farm Mutual and State Farm General agreed to pay the full
3 policy limits of the State Farm automobile liability policy (\$200,000) and the State Farm
4 personal umbrella policy (\$2,000,000) to the Westobys and Raphaels in exchange for the
5 Westobys and Raphaels' agreement to enter into a covenant not to execute against Alexander
6 Holton.

7 It was not until after a copy of this settlement agreement was provided to counsel for
8 Nationwide that it discovered that it was State Farm General, not State Farm Mutual, who issued
9 the State Farm personal umbrella policy.

10 State Farm General contends that it is entitled to equitable contribution from Nationwide
11 in this matter, in the event that it is adjudicated in this case that coverage exists for the claims of
12 the Westobys and Raphaels under the Nationwide personal umbrella policy, and/or a settlement
13 is reached as between these parties.

14 There is no dispute between Nationwide and State Farm Mutual, who does not contend
15 that it is entitled to equitable contribution from Nationwide. Instead, the only possible dispute
16 between insurance carriers is between Nationwide and State Farm **General**, who should have
17 been named as a defendant in this action, instead of State Farm Mutual. As such, Nationwide
18 intends to file a First Amended Complaint to correctly name State Farm General as a defendant
19 in this action, and delete State Farm Mutual as a defendant.

20 The filing of this First Amended Complaint will not impact any of the current deadlines
21 or the trial date in this action, and the parties believe that it will promote judicial economy to
22 resolve all claims relating to the Nationwide personal umbrella policy in this action.

23 STIPULATION

24 It is hereby stipulated by State Farm Mutual, State Farm General, Alexander Holton,
25 John Westoby, Lynn Westoby, Marie Raphael, Ray Raphael, and Nationwide, by and through
26 their respective counsel of record, that Nationwide shall be permitted to file the First Amended
27 Complaint in the form attached hereto as Exhibit A.

28 It is further stipulated that the filing of the First Amended Complaint shall not impact in

any way the current case management or trial deadlines, nor shall it impact the trial date.

IT IS SO STIPULATED.

Dated: ^{July 1} ~~June 8~~, 2005

LONG & LEVIT LLP

By: 

KAREN L. UNO
DAVID P. BOROVSKY
Attorneys for Plaintiff, NATIONWIDE
MUTUAL INSURANCE COMPANY

Dated: June __, 2005

HAYES, DAVIS, ELLINGSON, MCCLAY &
SCOTT

By: _____

STEPHEN M. HAYES
RICHARD A. DANA
Attorneys for Defendant, STATE FARM
MUTUAL AUTOMOBILE INSURANCE
COMPANY and STATE FARM GENERAL
INSURANCE COMPANY

Dated: June __, 2005

ABBEY, WIETZENBERG, WARREN, & EMERY

By: _____

PATRICK W. EMERY
Attorneys for Defendants
JOHN WESTOBY and LYNN WESTOBY

Dated: June __, 2005

BAUM & BLAKE

By: _____

DAVID B. BAUM
Attorneys for Defendants
MARIE RAPHAEL and RAY RAPHAEL

Dated: June __, 2005

COLLINS, TOSCHI & DOYLE

By: _____

WAYNE M. COLLINS
Attorneys for Defendant
ALEXANDER HOLTON

1 any way the current case management or trial deadlines, nor shall it impact the trial date.

2 IT IS SO STIPULATED.

3 Dated: June __, 2005

LONG & LEVIT LLP


5 By:

6 KAREN L. UNO
7 DAVID P. BOROVSKY
Attorneys for Plaintiff, NATIONWIDE
MUTUAL INSURANCE COMPANY

8 Dated: June __, 2005

HAYES, DAVIS, ELLINGSON, MCCLAY &
SCOTT

10 By:

11 
STEPHEN M. HAYES
12 RICHARD A. DANA
Attorneys for Defendant, STATE FARM
13 MUTUAL AUTOMOBILE INSURANCE
COMPANY and STATE FARM GENERAL
INSURANCE COMPANY

14 Dated: June __, 2005

ABBEEY, WIETZENBERG, WARREN, & EMERY

16 By:

17 PATRICK W. EMERY
Attorneys for Defendants
18 JOHN WESTOBY and LYNN WESTOBY

19 Dated: June __, 2005

BAUM & BLAKE

21 By:

22 DAVID B. BAUM
Attorneys for Defendants
MARIE RAPHAEL and RAY RAPHAEL

23 Dated: June __, 2005

COLLINS, TOSCHI & DOYLE

25 By:

26 WAYNE M. COLLINS
Attorneys for Defendant
ALEXANDER HOLTON

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IT IS SO STIPULATED.

Dated: June __, 2005

LONG & LEVIT LLP

By: _____

KAREN L. UNO
DAVID P. BOROVSKY
Attorneys for Plaintiff, NATIONWIDE
MUTUAL INSURANCE COMPANY

Dated: June __, 2005

HAYES, DAVIS, ELLINGSON, MCCLAY &
SCOTT

By: _____

STEPHEN M. HAYES
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Attorneys for Defendant, STATE FARM
MUTUAL AUTOMOBILE INSURANCE
COMPANY and STATE FARM GENERAL
INSURANCE COMPANY

Dated: June 7th, 2005

ABBEY, WIETZENBERG, WARREN, & EMERY

By:  _____

PATRICK W. EMERY
Attorneys for Defendants
JOHN WESTOBY and LYNN WESTOBY

Dated: June __, 2005

BAUM & BLAKE

By: _____

DAVID B. BAUM
Attorneys for Defendants
MARIE RAPHAEL and RAY RAPHAEL

Dated: June __, 2005

COLLINS, TOSCHI & DOYLE

By: _____

WAYNE M. COLLINS
Attorneys for Defendant
ALEXANDER HOLTON

any way the current case management or trial deadlines, nor shall it impact the trial date.

IT IS SO STIPULATED.

Dated: June __, 2005

LONG & LEVIT LLP

By: _____

KAREN L. UNO
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Attorneys for Plaintiff, NATIONWIDE
MUTUAL INSURANCE COMPANY

Dated: June __, 2005

HAYES, DAVIS, ELLINGSON, MCCLAY &
SCOTT

By: _____

STEPHEN M. HAYES
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MUTUAL AUTOMOBILE INSURANCE
COMPANY and STATE FARM GENERAL
INSURANCE COMPANY

Dated: June __, 2005

ABBEY, WIETZENBERG, WARREN, & EMERY

By: _____

PATRICK W. EMERY
Attorneys for Defendants
JOHN WESTOBY and LYNN WESTOBY

Dated: June 7, 2005

BAUM & BLAKE

By:  _____

DAVID B. BAUM
Attorneys for Defendants
MARIE RAPHAEL and RAY RAPHAEL

Dated: June __, 2005

COLLINS, TOSCHI & DOYLE

By: _____

WAYNE M. COLLINS
Attorneys for Defendant
ALEXANDER HOLTON

any way the current case management or trial deadlines, nor shall it impact the trial date.

IT IS SO STIPULATED.

Dated: June __, 2005

LONG & LEVIT LLP

By: _____

KAREN L. UNO
DAVID P. BOROVSKY
Attorneys for Plaintiff, NATIONWIDE
MUTUAL INSURANCE COMPANY

Dated: June __, 2005

HAYES, DAVIS, ELLINGSON, MCCLAY &
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STEPHEN M. HAYES
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MUTUAL AUTOMOBILE INSURANCE
COMPANY and STATE FARM GENERAL
INSURANCE COMPANY

Dated: June __, 2005

ABBEY, WIETZENBERG, WARREN, & EMERY

By: _____

PATRICK W. EMERY
Attorneys for Defendants
JOHN WESTOBY and LYNN WESTOBY

Dated: June __, 2005

BAUM & BLAKE

By: _____

DAVID B. BAUM
Attorneys for Defendants
MARIE RAPHAEL and RAY RAPHAEL

Dated: June __, 2005

COLLINS, TOSCHI & DOYLE

By: _____

WAYNE M. COLLINS
Attorneys for Defendant
ALEXANDER HOLTON

ORDER

FOR GOOD CAUSE APPEARING the Court finds that Nationwide may file the First Amended Complaint attached to the stipulation as Exhibit A. The currently scheduled pretrial deadlines and trial date shall remain unchanged.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: July 1, 2005



By: _____

THE HONORABLE MAXINE M. CHESNEY
UNITED STATES DISTRICT COURT JUDGE

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